CWP No.1038 of 2006

10.9.2007 Present: Mr.K.D.Shreedhar and Mr.Rajnish Maniktala, Advocates, for the petitioner.

Mr.M.S.Chandel, Advocate General, with Mr.J.K.Verma, Deputy Advocate General, for respondents No.1 and 2.

Mr. Ajay Chandel, Advocate for respondent No.3.

As the arguments were in progress, the parties came to terms whereby it has specifically been agreed by Mr.K.D. Shreedhar, learned counsel appearing for the petitioner that the petitioner would give up its challenge completely and in its entirety to the impugned order dated 23rd June, 2006 if the petitioner is permitted by this Court to raise a dispute, rather the only dispute relating to the claim of damages based upon the compensation component as well as damages linked with other components. In other words, according to Mr. Shreedhar, while giving up its challenge to the impugned order, the petitioner would restrict its claim only for damages/compensation against the respondents. The respondents are agreeable to this suggestion of Shri K.D.Shreedhar.

Based upon the aforesaid statement of Mr. Shreedhar the parties agree that the only dispute now surviving between the parties with respect to the subject matter of this petition being the petitioner's claim for damages/compensation, this dispute be referred to arbitration in terms of clause 19 of the Agreement between the parties which lays down as under:-

"Clause 19 Arbitration

19.1 Any dispute or difference whatsoever arising between the parties to the agreement out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity of the breach thereof shall be settled by arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the award thereunder shall be final and binding upon the parties, subject to legal remedies available under the law.

19.2 Arbitration shall be conducted at Shimla in Himachal Pradesh.

The parties also agree that Shri Justice K.C. Sood (Retd.), a former judge of this Court be appointed as a Single Member Arbitral Tribunal to adjudicate upon the aforesaid disputes and to pass arbitral award.

Based upon the aforesaid agreement between the parties, we dispose of this petition as settled and pass the following agreed order:

(1) The impugned order dated 23rd June, 2006 is upheld by this Court. The upholding of this order by us, however, shall not be construed as an expression of opinion by us with respect to the claim of the petitioner relating to compensation/damages. The petitioner's claim for damages etc. shall be decided on its own merits by the learned Arbitrator uninfluenced by the upholding of the impugned order by us.

(2) The only surviving dispute between the parties now, namely, the petitioner's claim for damages/compensation is hereby referred for adjudication through arbitration in terms of the aforesaid arbitration agreement in existence between the parties.

(3) Shri Justice K.C.Sood (Retd.), a former Judge of this Court is hereby appointed as a Single Member Arbitral Tribunal for the aforesaid purpose. He shall pass his arbitral award accordingly.

The fee of the learned Sole Arbitrator (in lump sum) is fixed at Rupees one lac to be paid to him in equal shares by both the parties. This fee shall include all expenses, including secretarial expenses but shall not include the travelling, boarding and lodging expenses to be incurred in connection with the arbitration.

Petition disposed of.

(V.K.Gupta), C.J.

September 10,2007 **(Rajiv Sharma), J.**

(sck)